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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14

15 HARRY MASON, INC.

16 Plaintiff,

17 v.

18 ALMOND INTERNATIONAL,
AURAFIN, LLC, and Does 1 through
19 25,

20 Defendants.

CASE NO. C 05 3911 SC

Assigned to the Hon. Samuel Conti

Complaint Filed September 27, 2005

STIPULATED PROTECTIVE ORDER

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords extends only
9 to the limited information or items that are entitled under the applicable legal
10 principles to treatment as confidential.

11 The parties further acknowledge, as set forth in Section 10, below, that this
12 Stipulated Protective Order creates no entitlement to file confidential information
13 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
14 and reflects the standards that will be applied when a party seeks permission from
15 the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Party: any party to this action, including all of its officers, directors,
18 employees, consultants, retained experts, and outside counsel (and their support
19 staff).

20 2.2 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner generated, stored, or maintained (including, among other
22 things, testimony, transcripts, or tangible things) that are produced or generated in
23 disclosures or responses to discovery in this matter.

24 2.3 "Confidential" Information or Items: information (regardless of how
25 generated, stored or maintained) or tangible things that qualify for protection under
26 standards developed under F.R.Civ.P. 26(c).

27 2.4 "Highly Confidential - Attorneys' Eyes Only" Information or Items:
28 extremely sensitive "Confidential Information or Items" whose disclosure to another

1 Party or nonparty would create a substantial risk of serious injury that could not be
2 avoided by less restrictive means.

3 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 2.6 Producing Party: a Party or non-party that produces Disclosure or
6 Discovery Material in this action.

7 2.7. Designating Party: a Party or non-party that designates information or
8 items that it produces in disclosures or in responses to discovery as "Confidential"
9 or "highly Confidential - Attorneys' Eyes Only."

10 2.8 Protected Material: any Disclosure or Discovery Material that is
11 designated as "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

12 2.9. Outside Counsel: attorneys who are not employees of a Party but who
13 are retained to represent or advise a Party in this action.

14 2.10 House Counsel: attorneys who are employees of a Party.

15 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
16 well as their support staffs).

17 2.12 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this action and who is not a past or a current
20 employee of a Party or of a competitor of a Party's and who, at the time of retention,
21 is not anticipated to become an employee of a Party or a competitor of a Party's.
22 This definition includes a professional jury or trial consultant retained in connection
23 with this litigation.

24 2.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying; videotaping; translating; preparing exhibits or
26 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
27 and their employees and subcontractors.
28

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also any information copied or extracted
4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
5 testimony, conversations, or presentations by parties or counsel to or in court or in
6 other settings that might reveal Protected Material.

7 **4. DURATION**

8 Even after the termination of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees
10 otherwise in writing or a court order otherwise directs.

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or non-party that designates information or items for protection
14 under this Order must take care to limit any such designation to specific material
15 that qualifies under the appropriate standards. A Designating Party must take care
16 to designate for protection only those parts of material, documents, items, or oral or
17 written communications that qualify so that other portions of the material,
18 documents, items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified, or that have been made for an improper
22 purpose (e.g., to unnecessarily encumber or retard the case development process, or
23 to impose unnecessary expenses and burdens on other parties), expose the
24 Designating Party to sanctions.

25 If it comes to a Party's or a non-party's attention that information or items that
26 it designated for protection do not qualify for protection at all, or do not qualify for
27 the level of protection initially asserted, that Party or non-party must promptly
28 notify all other parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
3 stipulated or ordered, material that qualifies for protection under this Order must be
4 clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (apart from transcripts of
7 depositions or other pretrial or trial proceedings), that the Producing Party affix the
8 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
9 ONLY" at the top of each page that contains protected material. If only a portion or
10 portions of the material on a page qualifies for protection, the Producing Party also
11 must clearly identify the protected portion(s) (e.g., by making appropriate markings
12 in the margins) and must specify, for each portion, the level of protection being
13 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
14 ATTORNEYS' EYES ONLY").

15 A Party or non-party that makes original documents or materials available for
16 inspection need not designate them for protection until after the inspecting Party has
17 indicated which material it would like copied and produced. During the inspection
18 and before the designation, all of the material made available for inspection shall be
19 deemed "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY." After the
20 inspecting Party has identified the documents it wants copied and produced, the
21 Producing Party must determine which documents, or portions thereof, qualify for
22 protection under this Order, then, before producing the specified documents, the
23 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY") at the top of each
25 page that contains Protected Material. If only a portion or portions of the material
26 on a page qualifies for protection, the Producing Party also must clearly identify the
27 protected portion(s) (e.g., by making appropriate markings in the margins) and must
28 specify, for each portion, the level of protection being asserted (either

1 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
2 ONLY").

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Party or non-party offering or sponsoring the testimony
5 identify on the record, before the close of the deposition, hearing, or other
6 proceeding, all protected testimony, and further specify any portions of the
7 testimony that qualify as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
8 ONLY." When it is impractical to identify separately each portion of testimony that
9 is entitled to protection, and when it appears that substantial portions of the
10 testimony may qualify for protection, the Party or non-party that sponsors, offers, or
11 gives the testimony may invoke on the record (before the deposition or proceeding
12 is concluded) a right to have up to 20 days to identify the specific portions of the
13 testimony as to which protection is sought and to specify the level of protection
14 being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-
15 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are
16 appropriately designated for protection within the 20 days shall be covered by the
17 provisions of this Stipulated Protective Order.

18 Transcript pages containing Protected Material must be separately bound by
19 the court reporter, who must affix to the top of each such page the legend
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
21 ONLY," as instructed by the Party or nonparty offering or sponsoring the witness or
22 presenting the testimony.

23 (c) for information produced in some form other than documentary, and
24 for any other tangible items, that the Producing Party affix in a prominent place on
25 the exterior of the container or containers in which the information or item is stored
26 the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
27 EYES ONLY." If only portions of the information or item warrant protection, the
28 Producing Party, to the extent practicable, shall identify the protected portions,

1 specifying whether they qualify as "Confidential" or as "Highly Confidential -
2 Attorneys' Eyes Only."

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items as "Confidential" or "Highly
5 Confidential - Attorneys' Eyes Only" does not, standing alone, waive the
6 Designating Party's right to secure protection under this Order for such material. If
7 material is appropriately designated as "Confidential" or "Highly Confidential-
8 Attorneys' Eyes Only" after the material was initially produced, the Receiving Party,
9 on timely notification of the designation, must make reasonable efforts to assure that
10 the material is treated in accordance with the provisions of this Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
13 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
14 unnecessary economic burdens, or a later significant disruption or delay of the
15 litigation, a Party does not waive its right to challenge a confidentiality designation
16 by electing not to mount a challenge promptly after the original designation is
17 disclosed.

18 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
19 Designating Party's confidentiality designation must do so in good faith and must
20 begin the process by conferring directly (in voice to voice dialogue; other forms of
21 communication are not sufficient) with counsel for the Designating Party. In
22 conferring, the challenging Party must explain the basis for its belief that the
23 confidentiality designation was not proper and must give the Designating Party an
24 opportunity to review the designated material, to reconsider the circumstances, and,
25 if no change in designation is offered, to explain the basis for the chosen
26 designation. A challenging Party may proceed to the next stage of the challenge
27 process only if it has engaged in this meet and confer process first.

28

1 6.3 Judicial Intervention. A Party that elects to press a challenge to a
 2 confidentiality designation after considering the justification offered by the
 3 Designating Party may file and serve a motion under Civil Local Rule 7 (and in
 4 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
 5 material and sets forth in detail the basis for the challenge. Each such motion must
 6 be accompanied by a competent declaration that affirms that the movant has
 7 complied with the meet and confer requirements imposed in the preceding
 8 paragraph and that sets forth with specificity the justification for the confidentiality
 9 designation that was given by the Designating Party in the meet and confer dialogue.

10 The burden of persuasion in any such challenge proceeding shall be on the
 11 Designating Party. Until the court rules on the challenge, all parties shall continue
 12 to afford the material in question the level of protection to which it is entitled under
 13 the Producing Party's designation.

14 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 16 disclosed or produced by another Party or by a non-party in connection with this
 17 case only for prosecuting, defending, or attempting to settle this litigation. Such
 18 Protected Material may be disclosed only to the categories of persons and under the
 19 conditions described in this Order. When the litigation has been terminated, a
 20 Receiving Party must comply with the provisions of section 11, below (FINAL
 21 DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
 23 location and in a secure manner that ensures that access is limited to the persons
 24 authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 26 otherwise ordered by the court or permitted in writing by the Designating Party, a
 27 Receiving Party may disclose any information or item designated CONFIDENTIAL
 28 only to:

1 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 2 employees of said Counsel to whom it is reasonably necessary to disclose the
 3 information for this litigation and who have signed the "Agreement to Be Bound by
 4 Protective Order" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the
 6 Receiving Party to whom disclosure is reasonably necessary for this litigation and
 7 who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

8 (c) experts (as defined in this Order) of the Receiving Party to whom
 9 disclosure is reasonably necessary for this litigation and who have signed the
 10 "Agreement to Be Bound by Protective Order" (Exhibit A);

11 (d) the Court and its personnel;

12 (e) court reporters, their staffs, and professional vendors to whom disclosure
 13 is reasonably necessary for this litigation and who have signed the "Agreement to
 14 Be Bound by Protective Order" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is
 16 reasonably necessary and who have signed the "Agreement to Be Bound by
 17 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits
 18 to depositions that reveal Protected Material must be separately bound by the court
 19 reporter and may not be disclosed to anyone except as permitted under this
 20 Stipulated Protective Order.

21 (g) the author of the document or the original source of the information.

22 7.3 Disclosure of "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES
 23 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in
 24 writing by the Designating Party, a Receiving Party may disclose any information or
 25 item designated "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" only
 26 to:

27 (a) the Receiving Party's Outside Counsel of record in this action, as
 28 well as employees of said Counsel to whom it is reasonably necessary to disclose

the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the

1 expenses of seeking protection in that court of its confidential material - and nothing
2 in these provisions should be construed as authorizing or encouraging a Receiving
3 Party in this action to disobey a lawful directive from another court.

4 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
9 to retrieve all copies of the Protected Material, (c) inform the person or persons to
10 whom unauthorized disclosures were made of all the terms of this Order, and (d)
11 request such person or persons to execute the "Acknowledgment and Agreement to
12 Be Bound" that is attached hereto as Exhibit A.

13 **10. FILING PROTECTED MATERIAL**

14 Without written permission from the Designating Party or a court order
15 secured after appropriate notice to all interested persons, a Party may not file in the
16 public record in this action any Protected Material. A Party that seeks to file under
17 seal any Protected Material must comply with Civil Local Rule 79-5.

18 **11. FINAL DISPOSITION**

19 Unless otherwise ordered or agreed in writing by the Producing Party, within
20 sixty days after the final termination of this action or any appeal, each Receiving
21 Party must return or destroy all Protected Material to the Producing Party. As used
22 in this subdivision, "all Protected Material" includes all copies, abstracts,
23 compilations, summaries or any other form of reproducing or capturing any of the
24 Protected Material. The Receiving Party may destroy some or all of the Protected
25 Material instead of returning it. Whether the Protected Material is returned or
26 destroyed, the Receiving Party must submit a written certification to the Producing
27 Party (and, if not the same person or entity, to the Designating Party) by the sixty
28 day deadline that identifies (by category, where appropriate) all the Protected

1 Material that was returned or destroyed and that affirms that the Receiving Party has
2 not retained any copies, abstracts, compilations, summaries or other forms of
3 reproducing or capturing any of the Protected Material. Notwithstanding this
4 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
5 papers, transcripts, legal memoranda, correspondence or attorney work product,
6 even if such materials contain Protected Material. Any such archival copies that
7 contain or constitute Protected Material remain subject to this Protective Order as
8 set forth in Section 4 (DURATION), above.

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1 **12. MISCELLANEOUS**

2 12.1. Right to Further Relief Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2. Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 IT IS SO STIPULATED, THROUGH THE COUNSEL OF RECORD.

10 DATED: July 12, 2006

FULWIDER PATTON LLP

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12
13 By: Jennifer L. Webber

I. Morley Drucker

Jennifer L. Webber

Attorneys for Harry Mason, Inc.

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15
16 DATED: July 12, 2006

NOTARO & MICHALOS P.C.

17
18
19 By: Angelo Notaro

Angelo Notaro

John Zaccaria

Attorneys for Almond International, Inc.

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22 PURSUANT TO STIPULATION, IT IS SO ORDERED

23 DATED: 7/25/06

24 Samuel Conti
United States District Court

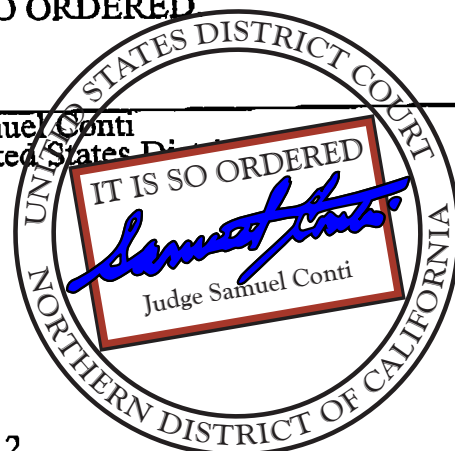


EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____, of _____ declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ in the case of Harry Mason, Inc. v. Almond International, Aurafin, LLC, Case No. C 05 3911 SC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Executed _____, 2006, at _____, _____.

Name: